

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 5706

IN THE MATTER OF:

Served September 22, 1999

Application of MALEK INVESTMENT )  
OF VIRGINIA, INC., Trading as )  
MONTGOMERY AIRPORT SHUTTLE, for )  
a Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-99-11

Applicant, Malek Investment of Virginia, Inc., (Malek of Virginia), seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. Applicant's president and sole shareholder, Assadollah Malekzadeh, is the president and sole shareholder of Malek Investment, Inc., trading as Montgomery Airport Shuttle, WMATC Carrier No. 202. Applicant, its owner and Carrier No. 202 are the subjects of a Commission investigation in Case No. MP-98-53.<sup>1</sup>

Protests to the application have been filed by Washington Shuttle, Inc., trading as SuperShuttle, WMATC Carrier No. 369, and the Metropolitan Washington Airports Authority (MWAA), on the grounds that Malek of Virginia is not fit to receive a certificate of authority and that common control of Malek of Virginia and Carrier No. 202 would not be consistent with the public interest. Both protestants have requested a hearing.

Applicant has responded to the protests by filing a Motion To Withdraw Application, without prejudice. SuperShuttle opposes the motion on the ground that granting the motion would deny SuperShuttle the hearing it has requested in connection with its protest. SuperShuttle also has filed a petition to intervene in the Commission's investigation of applicant in Case No. MP-98-53 and a motion to consolidate the two proceedings. SuperShuttle argues in the alternative that if withdrawal is permitted, it should be granted with prejudice against applicant's right to file a similar application at any time in the future.

Unlike SuperShuttle, MWAA has not filed an objection to applicant's motion to withdraw and has not filed a petition to intervene in Case No. MP-98-53.

The motion to withdraw shall be granted. "The Commission cannot require one to apply for any specific operating authority, or to continue to pursue an application already filed, if he is under no

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<sup>1</sup> In re Malek Investment, Inc., t/a Montgomery Airport Shuttle, WMATC No. 202, & Malek Investment of Virginia, Inc., & Assadollah Malekzadeh, No. MP-98-53, Order No. 5419 (Sept. 25, 1998).

legal compulsion to furnish the services."<sup>2</sup> Malek of Virginia is under no legal compulsion to furnish services requiring a certificate of authority. Therefore, the motion must be granted.

While the application also seeks our approval of Assadollah Malekzadeh's common ownership of applicant and WMATC Carrier No. 202, the cease and desist order issued today in Case No. MP-98-53 provides that, unless and until otherwise ordered by the Commission, Malek of Virginia shall cease operating in the Metropolitan District outside Virginia and that Carrier No. 202 and Assadollah Malekzadeh shall not consolidate or merge any part of the ownership, management, or operation of Carrier No. 202's property or franchise with any other carrier, including Malek of Virginia, or permit such consolidation or merger to continue, in violation of Article XII, Section 3(a)(i), of the Compact. This decision obviates the need for our approval at this time.<sup>3</sup>

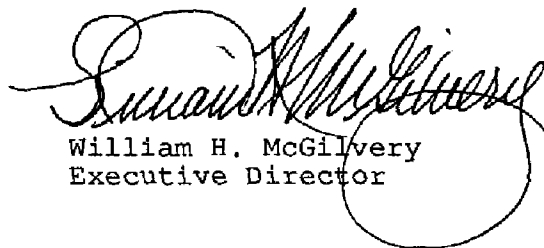
Withdrawal shall be permitted without prejudice. Although we find today in Case No. MP-98-53 that applicant and its owner have knowingly and willfully violated the Compact, the determination of whether that disqualifies Malek of Virginia from holding operating authority in the future must await a decision on the merits of an application for WMATC authority, reached after applying the appropriate criteria,<sup>4</sup> including an examination of applicant's and its owner's post-withdrawal behavior.<sup>5</sup> Foreclosing in advance consideration of all relevant facts and factors would be an abuse of discretion.<sup>6</sup>

THEREFORE, IT IS ORDERED:

1. That Malek of Virginia's Motion To Withdraw Application is granted without prejudice.

2. That all other pending requests and motions are denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS ALEXANDER, LIGON, AND MILLER:



William H. McGilver  
Executive Director

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<sup>2</sup> Montgomery Charter Serv. v. WMATC, 302 F.2d 906 (D.C. Cir. 1962).

<sup>3</sup> Id.

<sup>4</sup> E.g., In re William J. Appell, t/a Tech Tours, No. AP-96-01, Order No. 4830 (May 8, 1996) (applying five-part test); In re Madison Limo. Serv., Inc., No. AP-91-39, Order No. 3891 (Feb. 24, 1992) (same).

<sup>5</sup> See In re Ira F. Gadd, t/a Columbia Tours, No. 346, Order No. 1627 (Nov. 18, 1976) (approving application after previous denial).

<sup>6</sup> Willett v. ICC, 710 F.2d 861 (D.C. Cir. 1983).